

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs March 11, 2003

**STATE OF TENNESSEE v. MICHAEL R. BATES**

**Appeal from the Criminal Court for Hickman County**  
**No. 97-5202CR-I Russ Heldman, Judge**

---

**No. M2002-01803-CCA-R3-CD - Filed June 2, 2003**

---

The defendant, Michael R. Bates, was charged with aggravated assault, reckless endangerment, and vandalism over \$1000. After a bench trial, he was found not guilty by reason of insanity. See Tenn. Code Ann. § 33-7-303. Subsequently, the trial court ordered the defendant to participate in a mandatory outpatient treatment program. Some four years later, the defendant filed a motion to be released from the treatment program based upon the state's failure to seek renewal of his obligation pursuant to Tennessee Code Annotated section 33-6-621. The trial court denied the motion, concluding that section 33-6-621 was not applicable and that the defendant had to remain in the treatment program until released by the court. In this appeal, the defendant asserts that the trial court erred by determining that Tennessee Code Annotated section 33-7-303 rather than section 33-6-621 was the controlling statute and, in the alternative, if section 33-7-303 is the controlling statute, then that statute is unconstitutional as applied to his case. The judgment is affirmed.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

GARY R. WADE, P.J., delivered the opinion of the court, in which JOE G. RILEY and ALAN E. GLENN, JJ., joined.

David A. Bates, Cumberland Furnace, Tennessee (on appeal), and John P. Cauley, Franklin, Tennessee (at trial), for the appellant, Michael R. Bates.

Paul G. Summers, Attorney General & Reporter; Kathy D. Aslinger, Assistant Attorney General; and Michael J. Fahey, Assistant District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

In 1997, the defendant, charged in a three-count indictment with aggravated assault, felony reckless endangerment, and vandalism over \$1000, was found not guilty by reason of insanity. The trial court ordered a period of detention for diagnosis and treatment purposes pursuant to Tennessee Code Annotated section 33-7-303(a). After evaluators determined that the defendant was not committable, the trial court ordered that he participate in a mandatory outpatient treatment program

pursuant to section 33-7-303(b). Acting pursuant to the terms of Tennessee Code Annotated section 33-6-621 (a provision of the code relating to "civil" commitments), the defendant's treatment provider had, at six-month intervals, sought renewal of his obligation to participate in mandatory outpatient treatment. In March of 2002, however, the treatment provider mailed notice to the trial court and to the defendant's conservator explaining that because the defendant had been placed in the mandatory outpatient treatment program under section 33-7-303, it would no longer seek the renewal required by section 33-6-621 and would instead send periodic evaluations to the District Attorney General as to the "continuing need for treatment" as required by section 33-7-303(b)(4). In response, the defendant filed a motion in the trial court asking to be relieved of his obligation to participate in the mandatory treatment program, contending he was entitled to release because the state had failed to timely renew his obligation pursuant to section 33-6-621.

The trial court denied relief, concluding that section 33-7-303 rather than section 33-6-621 was applicable. The court also determined that the defendant was not entitled to relief based upon the state's failure to seek a renewal of the obligation because such a failure was not a basis for terminating treatment under section 33-7-303.

In this appeal, the defendant contends that the trial court erred by concluding that his obligation to participate in mandatory outpatient treatment was controlled exclusively by section 33-7-303. He asserts that section 33-6-621 also applies. In support of his argument, the defendant points out that other portions of the "civil commitment" statute are specifically referenced in Tennessee Code Annotated section 33-7-303, that the procedure for judicial hospitalization after a finding of not guilty by reason of insanity is governed by the "civil commitment" procedures set forth in chapter 6 of title 33, and that the terms "civil commitment" and "criminal commitment" do not appear within our statutory code. The defendant also claims that if section 33-7-303 is the exclusive governing statute, then that statute is unconstitutional. He argues that because the statute does not provide a specific procedure under which he might petition the trial court for release from a mandatory outpatient treatment program, the statute violates his right to due process. The state submits that the trial court properly concluded that section 33-7-303 is the controlling statute and that, further, because the defendant did not raise the constitutionality of section 33-7-303 in the trial court, this court should not entertain the claim on appeal.

Tennessee Code Annotated section 33-7-303 provides, in pertinent part, as follows:

(a) When a person charged with a criminal offense is acquitted of the charge on a verdict of not guilty by reason of insanity at the time of the commission of the offense, the criminal court shall order the person detained for diagnosis and evaluation for a minimum of sixty (60) days and a maximum of ninety (90) days in a hospital or treatment resource.

(b) (1) Following diagnosis and evaluation, . . . [i]f certification is not provided that the person is committable under chapter 6, part 5 of this title, the district attorney general shall file a complaint in the criminal court for an order requiring the person to participate in outpatient treatment under this subsection.

\*

\*

\*

(3) If the court does not commit the person under chapter 6, part 5 of this title and the court determines that the person's condition resulting from mental illness is likely to deteriorate rapidly to the point that the person will pose a substantial likelihood of serious harm under § 33-6-501 unless treatment is continued, the court may order the person to participate in outpatient treatment. . . . The obligation to participate in outpatient treatment continues until it is terminated by the court under subdivision (b)(5).

(4) If the court orders the person to participate in outpatient treatment . . . . The qualified mental health professional shall file a report with the district attorney general every six (6) months as to the person's continuing need for treatment.

(5) The court shall terminate the obligation to participate in outpatient treatment when it determines that the person is no longer subject to the obligation under subdivision (b)(3).

Tenn. Code Ann. § 33-7-303(a), (b)(1), (3)-(5) (emphasis added).

Tennessee Code Annotated section 33-6-621 provides as follows:

IF

(1) during the sixth (6) month after discharge or after the last renewal the qualified mental health professional determines that:

(A) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission; and

(B) the person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued; and

(C) the person is not likely to participate in outpatient treatment unless legally obligated to do so; and

(D) mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(2) the obligation to participate in outpatient treatment is renewed for six (6) months, AND

(3) the qualified mental health professional shall notify the person, the person's attorney, the hospital which discharged the person, and the committing court of the decision and of the basis for it and of the person's right to request a hearing in the committing court.

Tenn. Code Ann. § 33-6-621.

The cardinal rule of statutory construction is to effectuate legislative intent without restricting or expanding a statute's coverage beyond its intended scope. Riggs v. Burson, 941 S.W.2d 44, 54 (Tenn. 1997); Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995). All rules of interpretation are to

that end. Browder v. Morris, 975 S.W.2d 308, 311 (Tenn. 1998); Davenport v. Chrysler Credit Corp., 818 S.W.2d 23, 27 (Tenn. Ct. App. 1991). In examining statutory language, courts should apply the ordinary and plain meaning of words. The meaning of a statute is to be determined not from specific words in a single sentence or section but from the act in its entirety in light of the general purpose of the legislation; any interpretations should express the intent and purpose of the legislation. National Gas Distrib., Inc. v. State, 804 S.W.2d 66, 67 (Tenn. 1991); Loftin v. Langsdon, 813 S.W.2d 475, 478-79 (Tenn. Ct. App. 1991). Courts presume that the legislature is aware of both its prior enactments and the law as it exists when new legislation is passed. Wilson v. Johnson County, 879 S.W.2d 807, 810 (Tenn. 1994). Statutes are to be construed with reference to pre-existing law and should not be interpreted to change it further than the express terms or the necessary implications. Harman v. Moore's Quality Snack Foods, Inc., 815 S.W.2d 519, 523 (Tenn. Ct. App. 1991).

Here, the plain language of section 33-7-303 establishes the standard by which a person acquitted based on his or her insanity may be compelled to participate in a mandatory outpatient treatment program. See Tenn. Code Ann. § 33-7-303(b)(3). Similarly, the statute vests the trial court with the authority to rescind a mandatory outpatient treatment order. Yet the trial court may do so only after it determines that the conditions requiring the imposition of the order under section 33-7-303(b)(3) no longer exist. Tenn. Code Ann. § 33-7-303(b)(5). There is no requirement in section 33-7-303 that the state seek biannual renewal of the obligation to participate in mandatory outpatient treatment and this court will not infer such a requirement. See Riggs, 941 S.W.2d at 54; Owens, 908 S.W.2d at 926; Harman, 815 S.W.2d at 523; Buford v. State, No. M2002-02180-CCA-R3-PC (Tenn. Crim. App., at Nashville, Apr. 24, 2003). While other portions of section 33-7-303 do make reference to the "civil" commitment statutes, see, e.g., Tenn. Code Ann. § 33-7-303(b)(1), the section regarding imposition of mandatory outpatient treatment does not. Had the legislature intended to apply the civil requirements for the imposition and continuation of mandatory outpatient treatment to insanity acquittees, it could have done so. That the defendant's treatment provider initially sought renewal of his obligation to participate in mandatory outpatient treatment pursuant to section 33-6-621 rather than sending evaluation results to the District Attorney, as required by section 33-7-303(b)(4), does not vest the defendant with any additional rights. It is our view that the trial court correctly concluded that the defendant's obligation to participate in a mandatory outpatient treatment program is governed solely by Tennessee Code Annotated section 33-7-303.

This court need not address the defendant's claim that section 33-7-303 is unconstitutional as applied to the defendant. As pointed out by the state, the defendant raises the constitutionality of the statute for the first time in this appeal. Our supreme court has held that "questions not raised in the trial court will not be entertained on appeal and this rule applies to an attempt to make a constitutional attack upon the validity of a statute for the first time on appeal unless the statute involved is so obviously unconstitutional on its face as to obviate the necessity for any discussion." Lawrence v. Stanford, 655 S.W.2d 927, 929 (Tenn. 1983) (citing Harrison v. Schrader, 569 S.W.2d 822 (Tenn. 1978); Dorrier v. Dark, 537 S.W.2d 888 (Tenn. 1976); Veach v. State, 491 S.W.2d 81 (Tenn. 1973); City of Elizabethton v. Carter County, 204 Tenn. 452, 321 S.W.2d 822 (1958)). The high court pointed out that the failure to present a constitutional challenge in the trial court deprives

the court of the opportunity "for the introduction of evidence which might be material and pertinent in considering the validity of the statute." Id. Here, the defendant did not attack the constitutionality of section 33-7-303 in the trial court. The sole issue before the trial court, according to the motion for release, was whether Tennessee Code Annotated section 33-6-621 relieved the defendant of the obligation for outpatient treatment because the state failed to renew the obligation for further treatment. The trial court properly determined that this code section had no application.

The trial court erred, however, when it concluded that it "was without authority to release [the defendant] from his obligation to participate in outpatient treatment," in light of the 1998 finding that outpatient treatment was necessary. If this were the case, a defendant could theoretically be required to undergo unneeded, yet mandated, outpatient treatment for an indefinite term. That could conceivably lead to a constitutional problem. It is unlikely that the legislature contemplated such a result. Tennessee Code Annotated section 33-7-303(b)(4) requires that the district attorney general be furnished a report every six months as to the person's need for continued treatment. The statute does not, however, require the district attorney general to file a petition for release if the report indicates continuing treatment is not needed. In our view, there is nothing that would prohibit the defendant from petitioning for release from outpatient treatment on the basis that he no longer meets the requirements for continuing treatment. Further, this court is unaware of any prohibition that would limit the defendant's access to the records and reports of his treatment providers. The defendant may seek review under Tennessee Code Annotated section 33-7-303, as opposed to section 33-6-621. In consequence, this court will not review any attack by the defendant on the constitutionality of the statute. See Lawrence, 655 S.W.2d at 929.

Accordingly, the judgment of the trial court is affirmed.

---

GARY R. WADE, PRESIDING JUDGE